

CHAPTER 4

PROCURING PROFESSIONAL SERVICES

4.1 RELATED STATUTORY AUTHORITY

1. SC Code §§ 8-13-700 through 8-13-795 of the Ethics, Government Accountability and Campaign Reform Act of 1991 establishes the Rules of Ethical Conduct for public employees.
2. SC Code § 11-35-2910 defines architect-engineer and land surveying services
3. SC Code § 11-35-3210(1) requires that architect-engineer, construction management, and land surveying services be procured as provided in § 11-35-3220 except as authorized by §§ 11-35-1560 (Sole Source), 11-35-1570 (Emergency) and 11-35-3230 (Small Professional Services Contract).
4. SC Code § 11-35-3215 provides for a preference for resident professionals when qualifications appear to be equal.
5. SC Code § 11-35-3220(5) requires the agency Selection Committee to evaluate each of the persons or firms interviewed in view of their (1) past performance; (2) the ability of professional personnel; (3) demonstrated ability to meet time and budget requirements; (4) location and knowledge of the locality of the project; (5) recent, current, and projected work loads of the firms; (6) creativity and insight related to the project; (7) related experience on similar projects; (8) volume of work for the agency over the past five years; and (9) any other special qualification required by the solicitation.
6. SC Code § 11-35-3245 prohibits architects or engineers who perform design work on a project under a contract awarded pursuant to § 11-35-3220 or § 11-35-3230 from also performing construction work on that project.
7. SC Code § 11-35-3310 allows indefinite delivery contracts to be awarded on an as-needed basis for construction related professional services pursuant to procurement procedures set forth in §§ 11-35-3220 and 11-35-3230.

4.2 PROFESSIONAL SERVICES

Professional Services are those master planning, planning, environmental, real estate acquisition, pre-construction, and other construction related services associated with the practice of architecture, engineering, land surveying, landscape architecture, interior design, and Construction Management. See SC Code Ann. § 11-35-2910 for a complete definition.

4.3 SMALL PROFESSIONAL SERVICES CONTRACTS (FEES OF \$25,000 OR LESS)

Small professional services contracts are contracts, including indefinite delivery contracts (IDCs), for professional services where the compensation for services is \$25,000 or less. This sum includes compensation for both basic services and additional services as defined in the Professional agreement. This sum does not include payments for reimbursable expenses.

In awarding a small professional services contract, the Agency may simply ask one or more Professional firms it chooses to submit a proposal. The Agency must select a Professional taking into account the following criteria:

1. The nature of the project;
2. The proximity of the consultant to the project;
3. The capability of the consultant to produce the required services within a reasonable time;
4. Past performance; and
5. The Professional's demonstrated ability to meet project budget requirements.

Subject to the foregoing considerations, the Agency may enter into contract negotiations with the selected firm. However, if the Agency has or has had other contracts with the most qualified Professional, the

Agency may not be able to contract with that Professional. State Law prohibits entering into a small Professional contract if, as a result, the sum of all fees, excluding reimbursable expenses, paid to the Professional in the previous 24 months will exceed \$75,000. The Professional the Agency chooses to negotiate with must provide the Agency with a list of services provided to the Agency and fees received from the Agency during the previous fiscal year.

The Agency may use a letter agreement embodying the terms and conditions negotiated as the contract. After executing the Professional agreement, the Agency must submit a copy to OSE for information purposes using SE-230, Transmittal of Small Professional Service Contract.

4.4 LARGE PROFESSIONAL SERVICES CONTRACTS (FEES EXCEEDING \$25,000)

A. SELECTION COMMITTEE

The first step in procuring professional services where the fee will exceed \$25,000 is to establish a selection committee (committee). The Agency head or designee sits as a permanent member of the committee for the purpose of coordinating and accounting for the committee's work.

The Agency may invite the OSE project manager to sit on the committee as a non-voting member to assist the committee as needed.

Committee members are subject to the Ethics, Government Accountability and Campaign Reform Act of 1991. (See SC Code Ann. §§ 8-13-700 through 8-13-795) Committee members should become familiar with the requirements of this act and avoid any conflict of interest. The Agency must have committee members execute Form SE 214 (Conflict of Interest & Confidentiality) as a means of advising them of their responsibilities.

The committee must comply with the Freedom of Information Act. There is a summary of the requirements of this act in Chapter 1. However, committee members must not disclose confidential information derived from proposals and negotiations submitted by competing offerors during the selection process.

B. COMMITTEE DUTIES:

In summary, the committee's duties are to:

1. Develop the description of the proposed project;
2. Determine the professional services required for the project;
3. Prepare the formal invitation for professional services;
4. Determine the ranking range for each of the evaluation criteria;
5. Evaluate all timely responses and determine the list of persons or firms to be interviewed; and
6. Attend all interviews, evaluate the qualifications of each firm, and determine the ranking of the firms interviewed.

C. INVITATION FOR PROFESSIONAL SERVICES

The committee must prepare the invitation for professional services on OSE Form SE 210. Once the Agency is ready to advertise, it must submit the completed invitation to OSE for review and approval. Upon approval, OSE will submit the invitation to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

D. SHORT-LISTING PROFESSIONALS FOR INTERVIEWS

Upon receiving responses to the invitation for professional services, the committee should review them for completeness. Each response (hereinafter "resumes") should include Federal Standard Forms 254 and 255 and any other information that the invitation required. Each resume should also include information responsive to the selection criteria. In the event of an incomplete resume, the Agency may contact the Professional who submitted the resume to obtain the required information provided the resume due date has not passed. Professionals must submit any such supplemental information to their resumes before the resume due date. The Agency may disqualify any Professional that fails to supply required information in their resume before the resume due date from further consideration for non-responsiveness.

The committee must evaluate all resumes prior to conducting any interviews using the following criteria:

1. Past performance;
2. Ability of professional personnel;
3. Demonstrated ability to meet time and budget requirements;
4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
5. Recent, current, and projected work load;
6. Creativity and insight related to the project;
7. Related experience on similar projects;
8. Volume of work awarded by the Agency to the Professional during the previous five years with the objective of equitably distributing contracts among qualified Professionals including certified Minority Business Enterprises and firms that have not had previous state work; and
9. Other special qualifications required by the solicitation.

After evaluating the resumes, the committee may create a short-list of Professionals considered most qualified for the committee to interview. The committee must select a minimum of three Professionals for interviews. If fewer than three Professionals responded to the invitation, the committee should interview each Professional that fully responded to the invitation.

The committee must prepare a written report supporting its determination as to which professionals it will interview. In this report, the committee must list the names of all professionals that responded to the Invitation for Professional Services and must enumerate its reasons for selecting the professional to be interviewed.

Using form SE 212 (Notice of Selection For Interview), the committee must notify all Professionals that responded to the invitation, which Professionals the committee selected for interviews.

E. INTERVIEWING AND EVALUATING SHORT LISTED PROFESSIONALS:

No later than ten days before the interview date, the committee should send written notice of the date and location for interviews to the short-listed Professionals. All interviews should occur on the same day. If the committee will be interviewing the Professionals in various locations, the chair should make sure that each location is similarly equipped and furnished. The committee should include with the notice of interview date and location the relative ranking of the criteria that the committee will use to score interviews.

Each member of the committee needs to be present for each interview. During the interviews, the committee may only evaluate the Professionals on the following criteria:

1. Past performance;
2. Ability of professional personnel;
3. Demonstrated ability to meet time and budget requirements;
4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
5. Recent, current and projected work loads of the firms;
6. Creativity and insight related to the project;
7. Related experience on similar projects;
8. Volume of work awarded by the using Agency to the Professional during the previous five years - objective is to equitably distribute contracts among qualified Professionals including certified Minority Business Enterprises and firms that have not had previous state work; and
9. Other special qualifications required by the solicitation.

The committee must not discuss fees and compensation with the Professionals during the interviews.

At the end of each interview, the committee must notify the Professional where and when they will post the Notification of Selection for Contract Negotiation (Form SE 219). After the close of all interviews, each committee member must complete an evaluation of all interviewed firms using Form SE 215 (Architect/Engineer Evaluation). After each committee member has completed and submitted his or her

rankings to the chair, the committee must compile these rankings into a committee ranking using Form SE 217 (Architect/Engineer Selection Committee Summary).

F. FINAL DETERMINATION AND NOTIFICATION OF SELECTION

The committee's decision on the ranking of each Professional is final and subject only to the Agency's internal approval process. Once the ranking report is final, the Agency must prepare a Notice of Selection for Contract Negotiation (Form SE 219) and post it on the date and at the location announced at the end of each interview. The Agency must mail a copy of the Notice to all Professionals that responded to the Invitation for Professional Services. SC Code § 11-35-4210 provides any Professional that responded to the invitation to protest within ten days after the posting of the Notice of Selection for Contract Negotiation. If an offeror files a protest, the Agency may not enter into a contract for the professional services until the protest is resolved or until after the State Engineer grants relief from the automatic stay on any further action. See Chapter 1 Part 1.11 for details on the protest process including lifting the stay on further action.

Note – Preference for Resident architect, engineers, construction manager, and land surveyors: SC Code § 11-35-3215 provides that all professionals providing design services (as defined in 11-35-2910) for construction must submit with its response to the invitation for proposals, certification as to whether the professional is or is not resident in South Carolina. When qualifications between the two highest ranked professional's appear equal, and one is non-resident, the Agency must select the resident professional for negotiations.

G. NEGOTIATING PROFESSIONAL CONTRACTS

The Agency must first negotiate with the Professional with the highest ranking in the ranking report. Only if the Agency is unable to negotiate an acceptable contract with that Professional may the Agency terminate those negotiations and approach the second highest ranked Professional. For more on terminating negotiations and negotiating with another Professional, see Paragraph J.

Successful contract negotiations require an exchange of information. The Agency should provide the Professional with the Agency's budgetary goals for the project, master plans, program data, Agency standards, and with all available technical information about the project work area. This will enable the Professional to estimate the design effort required for the project. Examples of technical information the Agency should provide if available include:

1. Program (unless it is to be developed by the Professional);
2. Site boundary and/or topography surveys;
3. Testing and surveys for hazardous material;
4. Sub-surface investigations;
5. Material testing, etc.

The Agency should obtain a description of the services the Professional proposes to provide and determine if the proposed scope of services is adequate or excessive. This will enable the Agency to put a value on the Professional's services.

The Agency should also become familiar with the standard professional services contract. After reviewing the standard contract, the Agency should ask and answer any number of questions. Examples are:

- Are the insurance limits adequate to cover the potential risk on this project and if not, are we willing to bear the risk?
- If we want increased insurance limits are we willing to pay the additional cost? (Check with the Professional to see what his/her insurance limits are, they may already be greater than the limits stated in the contract)
- What deliverables do we want?
- Do we have critical delivery dates for some or all of the deliverables and if so, what are they?
- Do we want digital drawings and if so what format and media?

H. NEGOTIATING THE PROFESSIONAL FEE

After exchanging information and agreeing on changes to the standard contract, the Agency is in a position to consider what would be a fair and reasonable fee for the Professional. The Agency may use the fee guidelines contained in Table 4.1 as an aid in negotiating a fee for full architectural/engineering services.

Table 4.1 FEE GUIDELINE FOR ARCHITECT/ENGINEER BASIC SERVICES			
1. This guide is only an aid for state agencies in conducting negotiations to achieve an appropriate fee for basic professional services.			
2. This guide is intended for normal construction projects using separate design and construction contracts			
3. Fees in this guide include all architectural, normal civil, structural, mechanical, fire protection and electrical engineering services required to provide complete design and construction period services. Fees do not include programming services and services related to Green Building Certifications.			
4. This guideline expires December 2, 2009.			
Estimated Construction Cost	Projects <u>Below Average</u> Complexity	Projects of <u>Average</u> Complexity	Projects <u>Above Average</u> Complexity
Below \$500,000	negotiated	negotiated	negotiated
\$ 500,000	7.25%	8.25%	9.25%
\$ 750,000	7.00%	7.50%	8.50%
\$ 1,000,000	6.70%	7.20%	8.20%
\$ 1,500,000	6.50%	7.00%	8.00%
\$ 2,000,000	6.30%	6.80%	7.80%
\$ 3,000,000	6.00%	6.65%	7.60%
\$ 4,000,000	5.75%	6.40%	7.30%
\$10,000,000	5.50%	6.10%	7.00%
Over \$10,000,000	negotiated	negotiated	negotiated

The Professional's scope of work on a specific project, the inherent design complexity of the building, and the nature of the work may warrant an upward or downward adjustment to the recommended amount in the guideline.

In addition to negotiating the Basic Services Fee, the Agency should negotiate allowances for any required Additional Services (those not covered by the scope of the Basic Services fee) and for reimbursable expenses.

I. FEES FOR LIMITED SCOPE OR SINGLE DISCIPLINE PROJECTS

The fee guideline does not apply to limited scope or single discipline projects. The Agency should negotiate fees for such projects in accordance with the scope of work required for the project. Examples of limited scope or single discipline projects include:

1. Equipment installation where the project involves a substantial amount of expensive equipment that is comparatively easy to accommodate;
2. Complex renovations to a building mechanical or electrical systems, with limited shutdown time allowed;
3. Paving or earth moving projects which require relatively little design effort;
4. Re-roofing projects; and
5. Asbestos abatement projects.

J. UNSUCCESSFUL NEGOTIATIONS

If the Agency is unable to negotiate an acceptable contract with the highest ranked Professional, the Agency may terminate negotiations. The Agency must provide the highest ranked Professional with written notice of the termination of negotiations. Upon providing written notice of termination to the highest ranked Professional, the Agency may contact the Professional receiving the next highest ranking to initiate negotiations. If the Agency is unable to negotiate an acceptable contract with this Professional as well, the Agency may continue the process in the same manner until the Agency is able to negotiate an acceptable contract. At no time, however, should negotiations include more than one Professional.

Following successful negotiations, the Agency must submit a Request for Authority to Execute a Professional Service Contract (Form SE-220) to OSE. If the project is a PIP, the Agency needs to have an approved A-1 form before submitting the Request to OSE. The Agency must include with the submission the attachments listed at the bottom of the form. The Agency may not execute the contract or authorize the Professional to begin work until OSE has approved the Request.

OSE has ten days to review and approve the Request for Authority to Execute a Professional Service Contract. Upon approval, OSE will return an approved copy of the Request to the Agency. The Agency may then execute a contract with the selected Professional. If OSE does not approve the Request, the State Engineer will give written notification to the Agency declaring his intention to contest the proposed contract and the reasons why. The Budget and Control Board will hear any such contest at its next regularly scheduled meeting after notification of the Agency. The Board will notify the Agency in writing of its decision.

4.5 PROFESSIONAL INDEFINITE DELIVERY CONTRACTS [IDCs]

A Professional Indefinite Delivery Contract (IDC) is a contract whereby the professional agrees to provide the Agency professional services on an “as-needed” basis during the term of the contract. Agencies procure Professional IDC’s in the same manner as any professional service contract as set forth in this chapter except they do not have to obtain OSE approval of the contract. Appendix E to this Manual provides guidance on procurement using IDC’s.

4.6 PROCEDURES FOR AMENDING PROFESSIONAL SERVICES CONTRACTS

The Agency should negotiate fees for changes in the scope of work using good procurement practices and in keeping with the terms of the contract. If an amendment to a Professional contract exceeds the Agency’s Professional contract amendment certification, the Agency must submit a completed Form SE 260 (Request for Authority to Amend a Professional Services Contract) to the OSE for approval, prior to authorizing the work. If an amendment to a Professional contract is within the Agency’s Professional contract amendment certification, the Agency shall submit a completed Form SE-260 to the OSE for informational purposes.

4.7 SOLE SOURCE AND EMERGENCY SELECTION OF PROFESSIONAL SERVICES

The Agency must make all sole source and emergency procurements in accordance with Chapter 8. Prior OSE approval of such procurements is not required.

4.8 PROFESSIONAL LIABILITY INSURANCE

All design professionals working for the State should carry a minimum amount of professional liability insurance. Article 12 to AIA Document B151 sets forth a recommended minimum amount of insurance. Agencies should evaluate the risks associated with each project and the potential consequences, and adjust the amounts accordingly.

4.9 DESIGN PROFESSIONAL ERRORS AND OMISSIONS

The agency should notify the Design Professional whenever the agency believes the Design Professional’s work product contains errors or omissions. The A/E shall promptly correct such error or omission without cost to the agency.

When the Design Professional’s error or omission results in costs to the Agency over those the Agency would have paid had the error or omission not occurred, the Design Professional is responsible for such additional cost. For purposes of determining costs, each error or omission constitutes a separate event.

If some or all of the increased costs due to an error are owed to a third party, such as a contractor, the Design Professional may elect to negotiate directly with the contractor and pay the contractor directly. All work added due to an omission must be negotiated through the agency to be sure the additional work is included in the construction contract by change order.